

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALICE R. TURNER,

Plaintiff,

V.

NANCY BERRYHILL, Acting
Commissioner of Social Security
Administration,

Defendant.

Case No. CV 15-8675-SP

MEMORANDUM OPINION AND ORDER

I.

INTRODUCTION

On November 5, 2015, plaintiff Alice Turner filed a complaint against defendant, the Commissioner of the Social Security Administration (“Commissioner”),¹ seeking a review of a denial of supplemental security income (“SSI”). The parties have fully briefed the matters in dispute, and the court deems the matter suitable for adjudication without oral argument.

¹ Pursuant to Fed. R. Civ. P. 25(d), Nancy A. Berryhill, the current Acting Commissioner, has been substituted as the defendant.

1 Plaintiff presents one disputed issue for decision: whether the
2 Administrative Law Judge (“ALJ”) properly considered the opinion of a State
3 Agency physician and included her opined limitations in his RFC determination
4 and corresponding hypothetical. Memorandum in Support of Plaintiff’s Complaint
5 (“P. Mem.”) at 3-6; Memorandum in Support of Defendant’s Answer (“D. Mem.”)
6 at 2-8.

7 Having carefully studied the parties’ memoranda on the issue in dispute, the
8 Administrative Record (“AR”), and the decision of the ALJ, the court concludes
9 that, as detailed herein, the ALJ properly considered the opinion of the State
10 Agency physician and reached a proper RFC determination. Consequently, the
11 court affirms the decision of the Commissioner denying benefits.

12 II.

13 **FACTUAL AND PROCEDURAL BACKGROUND**

14 Plaintiff, who was fourteen years old on the alleged disability onset date, is a
15 high school graduate who attended college for one year. AR at 51, 187. Plaintiff
16 has no past relevant work. *Id.* at 30, 41.

17 On March 28, 2011, plaintiff filed an application for SSI, alleging an onset
18 date of April 19, 2005 due to a mental condition and spinal, pelvic, and hip
19 problems. *Id.* at 51. The Commissioner denied plaintiff’s application initially and
20 upon reconsideration, after which she filed a request for a hearing. *Id.* at 74-77,
21 82-90.

22 On March 31, 2014, plaintiff, represented by counsel, appeared and testified
23 at a hearing before the ALJ. *Id.* at 38-49. The ALJ also heard testimony from
24 Kristan Cicero, a vocational expert. *Id.* at 45-49. On April 16, 2014, the ALJ
25 denied plaintiff’s claim for benefits. *Id.* at 21-31.

26 Applying the well-known five-step sequential evaluation process, the ALJ
27 found, at step one, that plaintiff had not engaged in substantial gainful activity
28

1 since March 28, 2011, the application date. *Id.* at 23.

2 At step two, the ALJ found plaintiff suffered from the following severe
3 impairments: fracture of the left wrist; pelvic inflammatory disease; dysthymic
4 disorder; a mood disorder; pain disorder associated with a general medical
5 condition; and post-traumatic stress disorder (“PTSD”). *Id.*

6 At step three, the ALJ found plaintiff’s impairments, whether individually or
7 in combination, did not meet or medically equal one of the listed impairments set
8 forth in 20 C.F.R. part 404, Subpart P, Appendix 1 (the “Listings”). *Id.*

9 The ALJ then assessed plaintiff’s residual functional capacity (“RFC”),² and
10 determined she had the RFC to perform a full range of work at all exertional levels,
11 but with the nonexertional limitations that plaintiff could: understand and
12 remember tasks; sustain concentration and persistence; socially interact with the
13 general public, co-workers, and supervisors; and adapt to workplace changes
14 frequently enough to perform unskilled low stress jobs that require simple
15 instructions. *Id.* at 27.

16 The ALJ found, at step four, that plaintiff had no past relevant work. *Id.* at
17 30.

18 At step five, considering plaintiff’s age, education, work experience, and
19 RFC, the ALJ found there were jobs that existed in significant numbers in the
20 national economy that plaintiff could perform, including cleaner II, laundry
21 laborer, and dryer attendant. *Id.* Consequently, the ALJ concluded plaintiff did
22 not suffer from a disability as defined by the Social Security Act (“Act” or “SSA”).
23

24 ² Residual functional capacity is what a claimant can do despite existing
25 exertional and nonexertional limitations. *Cooper v. Sullivan*, 880 F.2d 1152, 1155-
26 56 n.5-7 (9th Cir. 1989). “Between steps three and four of the five-step evaluation,
27 the ALJ must proceed to an intermediate step in which the ALJ assesses the
28 claimant’s residual functional capacity.” *Massachi v. Astrue*, 486 F.3d 1149, 1151
n.2 (9th Cir. 2007).

1 *Id.* at 31.

2 Plaintiff filed a timely request for review of the ALJ's decision, which was
3 denied by the Appeals Council. *Id.* at 1-3. The ALJ's decision stands as the final
4 decision of the Commissioner.

5 **III.**

6 **STANDARD OF REVIEW**

7 This court is empowered to review decisions by the Commissioner to deny
8 benefits. 42 U.S.C. § 405(g). The findings and decision of the Social Security
9 Administration must be upheld if they are free of legal error and supported by
10 substantial evidence. *Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir. 2001)
11 (as amended). But if the court determines that the ALJ's findings are based on
12 legal error or are not supported by substantial evidence in the record, the court may
13 reject the findings and set aside the decision to deny benefits. *Aukland v.*
14 *Massanari*, 257 F.3d 1033, 1035 (9th Cir. 2001); *Tonapetyan v. Halter*, 242 F.3d
15 1144, 1147 (9th Cir. 2001).

16 "Substantial evidence is more than a mere scintilla, but less than a
17 preponderance." *Aukland*, 257 F.3d at 1035. Substantial evidence is such
18 "relevant evidence which a reasonable person might accept as adequate to support
19 a conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998); *Mayes*, 276
20 F.3d at 459. To determine whether substantial evidence supports the ALJ's
21 finding, the reviewing court must review the administrative record as a whole,
22 "weighing both the evidence that supports and the evidence that detracts from the
23 ALJ's conclusion." *Mayes*, 276 F.3d at 459. The ALJ's decision "cannot be
24 affirmed simply by isolating a specific quantum of supporting evidence."
25 *Aukland*, 257 F.3d at 1035 (quoting *Sousa v. Callahan*, 143 F.3d 1240, 1243 (9th
26 Cir. 1998)). If the evidence can reasonably support either affirming or reversing
27 the ALJ's decision, the reviewing court "may not substitute its judgment for that
28

1 of the ALJ.’’ *Id.* (quoting *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir.
2 1992)).

3 IV.

4 DISCUSSION

5 Plaintiff argues the ALJ failed to properly consider and incorporate the
6 opinion of psychologist Dr. Heather Barrons, a State Agency physician,³ in his
7 RFC determination and, as such, posed an improper hypothetical to the vocational
8 expert. P. Mem. at 3-6. Specifically, plaintiff contends the ALJ omitted Dr.
9 Barrons’s opinion that she had moderate limitations in understanding,
10 remembering, and carrying out detailed instructions; maintaining attention and
11 concentration for extended periods; completing a normal workday and workweek
12 without interruptions from psychologically based symptoms; performing at a
13 consistent pace without an unreasonable number and length of rest periods;
14 interacting appropriately with the general public; accepting instructions and
15 responding appropriately to criticism from supervisors; and getting along with
16 coworkers or peers without distracting them or exhibiting behavioral extremes. *Id.*
17 at 4; *see* AR at 69-70.

18 RFC is what one can “still do despite [his or her] limitations.” 20 C.F.R.
19 § 416.945(a)(1)-(2). The ALJ reaches an RFC determination by reviewing and
20 considering all of the relevant evidence, including non-severe impairments. *Id.*;
21 *see Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007) (the failure to address an
22 impairment at step two is harmless if the RFC discussed it in step four).

23 In determining whether a claimant has a medically determinable impairment
24 and his or her RFC, among the evidence the ALJ considers is medical evidence. 20

25
26 ³ Psychologists are considered acceptable medical sources whose opinions are
27 accorded the same weight as physicians. 20 C.F.R. § 416.913(a)(2) (effective from
28 September 3, 2013 through March 26, 2017). Accordingly, for ease of reference,
the court will refer to all psychologists as physicians.

1 C.F.R. § 416.927(b).⁴ In evaluating medical opinions, the regulations distinguish
2 among three types of physicians: (1) treating physicians; (2) examining
3 physicians; and (3) non-examining physicians. 20 C.F.R.
4 § 416.927(c), (e); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996) (as amended).
5 “Generally, a treating physician’s opinion carries more weight than an examining
6 physician’s, and an examining physician’s opinion carries more weight than a
7 reviewing physician’s.” *Holohan v. Massanari*, 246 F.3d 1195, 1202 (9th Cir.
8 2001); 20 C.F.R. § 416.927(c)(1)-(2). The opinion of the treating physician is
9 generally given the greatest weight because the treating physician is employed to
10 cure and has a greater opportunity to understand and observe a claimant. *Smolen v.*
11 *Chater*, 80 F.3d 1273, 1285 (9th Cir. 1996); *Magallanes v. Bowen*, 881 F.2d 747,
12 751 (9th Cir. 1989).

13 Nevertheless, the ALJ is not bound by the opinion of the treating physician.
14 *Smolen*, 80 F.3d at 1285. If a treating physician’s opinion is uncontradicted, the
15 ALJ must provide clear and convincing reasons for giving it less weight. *Lester*,
16 81 F.3d at 830. If the treating physician’s opinion is contradicted by other
17 opinions, the ALJ must provide specific and legitimate reasons supported by
18 substantial evidence for rejecting it. *Id.* at 830. Likewise, the ALJ must provide
19 specific and legitimate reasons supported by substantial evidence for rejecting the
20 contradicted opinions of examining physicians. *Id.* at 830-31. The opinion of a
21 non-examining physician, standing alone, cannot constitute substantial evidence.
22 *Widmark v. Barnhart*, 454 F.3d 1063, 1066 n.2 (9th Cir. 2006); *Morgan v.*
23 *Comm’r*, 169 F.3d 595, 602 (9th Cir. 1999); *see also Erickson v. Shalala*, 9 F.3d
24 813, 818 n.7 (9th Cir. 1993).

27 ⁴ For claims filed before March 27, 2017, the evidence is considered under 20
28 C.F.R. § 416.927.

1 **Medical History**⁵

2 Dr. Suzanne Sanchez, a psychologist, purportedly treated plaintiff every six
3 months from July 26, 2011 through at least July 8, 2012.⁶ AR at 676-77. Dr.
4 Sanchez opined plaintiff had a fair ability to understand, remember, and carry out
5 complex and simple instructions, and maintain concentration, attention, and
6 persistence. *Id.* at 677. Dr. Sanchez did not describe the extent of plaintiff's
7 limitations. *See id.*

8 Dr. Fortuna Israel, a consultative psychiatrist, examined plaintiff on
9 November 7, 2011. AR at 656-60. Dr. Israel observed plaintiff was alert, oriented,
10 had poor attention and concentration, was coherent and organized, had an intact
11 memory, and had poor insight and judgment. *See id.* at 658-59. Based on the
12 examination, Dr. Israel diagnosed plaintiff with mood disorder, not otherwise
13 specified; impulse control disorder, not otherwise specified; PTSD; and borderline
14 personality disorder. *Id.* at 659. Dr. Israel opined plaintiff would be unable to
15 perform detailed and complex tasks, would be unable to maintain regular
16 attendance, would be resistant to supervision in a normal workday, might be
17 impulsive and interrupt her work, would have trouble interacting with coworkers
18 and authority, would have trouble dealing with the public, and would have trouble

19
20 ⁵ Because only plaintiff's non-exertional limitations are at issue, this court
21 will limit its discussion to plaintiff's mental impairments and limitations.

22 ⁶ The opinion of Dr. Suzanne Sanchez does not appear to be authentic. The
23 Short-Form Evaluation for Mental Disorders purportedly completed by Dr.
24 Sanchez is written in plaintiff's handwriting, and both Dr. Sanchez's first name and
25 psychologist are misspelled. *See* AR at 676-77 and Health Grades,
26 <https://www.healthgrades.com/provider/suzanne-sanchez-3mgmm>; *compare* AR at
27 676-77 to 205-12. Indeed, "psychologist" is misspelled in the same manner as in
28 the "Pain and Other Symptoms" form completed by plaintiff. *See id.* at 204.

Further, the non-medical opinions submitted by James Jerrell, Jr. and Sean
Gilbert in support of plaintiff's application also appear to have been completed by
plaintiff herself. *See id.* at 213-22, 233-39.

1 dealing with the usual stresses encountered in competitive work. *Id.* at 660. Dr.
2 Israel also noted, however, that plaintiff did not appear to be a reliable historian,
3 was not willing to make the effort, and appeared to be exaggerating or
4 manipulating at times. *See id.* at 656, 658.

5 Dr. Elmo Lee, a consultative psychiatrist, examined plaintiff on November
6 4, 2012. *Id.* at 680-83. Dr. Lee reviewed plaintiff's medical records and
7 performed a mental status examination. *See id.* at 680. Plaintiff exhibited logical,
8 coherent, and goal directed mental activity, as well as had an euthymic affect. *See*
9 *id.* at 681. Dr. Lee also observed plaintiff was alert, oriented, had an intact
10 memory, and was able to perform the serial 7s slowly. *See id.* at 681-82. Dr. Lee
11 diagnosed plaintiff with dysthymic disorder, pain disorder associated with a
12 general medical condition, PTSD by history, and bipolar disorder by history. *Id.* at
13 682. Dr. Lee determined plaintiff's psychiatric symptoms were relatively mild and
14 treatable. Based on the history, records, and examination, Dr. Lee opined plaintiff
15 could manage her own funds, perform simple and repetitive tasks, perform detailed
16 and complex tasks, accept instructions from supervisors, interact with co-workers
17 and the public, perform work activities on a consistent basis without special or
18 additional instruction, maintain regular attendance in the workplace and complete a
19 normal workday/workweek without interruptions from a psychiatric condition, and
20 deal with the usual stress encountered in the workplace. *Id.* at 682-83.

21 Dr. Steven E. Rudolph is a treating psychiatrist who only examined plaintiff
22 on one occasion.⁷ *See id.* at 864-65. Dr. Rudolph observed that plaintiff presented
23 with symptoms of anxiety, ADHD, and PTSD. *See id.* at 865. Dr. Rudolph noted
24 that plaintiff made inconsistent statements about whether she was pregnant and

25
26 ⁷ An intern at Antelope Valley Mental Health Clinic conducted the initial
27 psychiatric assessment of plaintiff on June 3, 2013, which was reviewed by a
28 psychologist. *See AR* at 858-62. Plaintiff failed to show up for appointments on
July 19, 2013 and September 30, 2013. *See id.* at 863, 866.

1 exhibited drug seeking behavior. *See id.* Based on the examination and plaintiff's
2 self-reporting, Dr. Rudolph diagnosed plaintiff with PTSD and anxiety. *Id.* at 872,
3 876. In a Mental RFC Questionnaire, dated November 4, 2013, Dr. Rudolph
4 opined plaintiff's mental abilities precluded her from, among other things:
5 understanding and remembering short and simple instructions for 15% or more of
6 an eight-hour work day; carrying out short and simple instructions for ten percent
7 of a work day; maintaining attention and concentration for an extended period of
8 time for five percent of the work day; making simple work-related decisions for ten
9 percent of a work day; and interacting appropriately with the general public for
10 five percent of a work day. *See id.* at 873-74. Dr. Rudolph also opined that with
11 mental health treatment, plaintiff could rehabilitate and work within six months.
12 *Id.* at 875.

13 Dr. Heather Barrons, a State Agency physician, reviewed plaintiff's medical
14 records. *See id.* at 65-71. Dr. Barrons determined plaintiff suffered from affective,
15 anxiety-related, and personality disorders. *Id.* at 67. From a functional
16 perspective, Dr. Barrons opined plaintiff would not be significantly limited in her
17 ability to, among other things: remember locations and work-like procedures;
18 understand, remember, and carry out very short and simple instructions; perform
19 activities within a schedule and maintain regular attendance; and maintain socially
20 appropriate behavior. *Id.* at 69-70. Dr. Barrons also opined plaintiff would be
21 moderately limited in her ability to, among other things: understand, remember,
22 and carry out detailed instructions; maintain attention and concentration for
23 extended periods; and complete a normal work day without interruptions from
24 psychologically based symptoms. *Id.* To clarify the degree of these limitations,
25 Dr. Barrons explained that plaintiff was capable of understanding and
26 remembering simple instructions and procedures; maintaining concentration, pace,
27 and persistence for simple routines; interacting with co-workers and supervisors on
28

1 a superficial and non-collaborative basis; brief public contact; and adapting to a
2 work environment. *Id.* at 70-71.

3 **The ALJ's Findings**

4 Relying on the treatment records, objective medical evidence, and medical
5 and non-medical opinions, the ALJ determined plaintiff could: understand and
6 remember tasks; sustain concentration and persistence; socially interact with the
7 general public, coworkers, and supervisors; and adapt to workplace changes
8 frequently enough to perform unskilled low stress jobs that require simple
9 instructions. *Id.* at 27. In reaching his RFC determination, the ALJ discussed all
10 of the medical history, gave substantial weight to the opinions of Dr. Lee, Dr.
11 Sanchez, and Dr. Barrons, and gave little weight to the opinions of Dr. Israel and
12 Dr. Rudolph.⁸ *Id.* at 24-29.

13 Plaintiff contends the ALJ erred because, although he stated that he gave
14 substantial weight to Dr. Barrons's opinion, he failed to include the moderate
15 limitations opined by Dr. Barrons in the hypothetical posed to the vocational
16 expert. P. Mem. at 3-6. In addition, at the hearing, the ALJ precluded plaintiff's
17 counsel from posing a hypothetical of an individual with "moderate limitations."
18 *See* AR at 47. Dr. Barrons opined moderate limitations in Section 1 of the Mental
19 Residual Functional Capacity Assessment ("MRFCA") and then explained the
20 degree and extent of those limitations. *See* AR at 69-70. Dr. Barrons opined that
21 plaintiff was capable of understanding and remembering simple instructions and
22 procedures; maintaining concentration, pace, and persistence for simple routines;

23
24 ⁸ As discussed above, Dr. Sanchez's opinion does not appear to be authentic.
25 This issue was raised by Dr. Barrons, but not the ALJ or the parties. *See* AR at 65.
26 Assuming Dr. Sanchez's opinion is not authentic, the ALJ's reliance on Dr.
27 Sanchez's opinion is nevertheless harmless. The RFC determination was
28 supported by both Dr. Lee's and Dr. Barrons's opinions. Because questions
concerning the authenticity of Dr. Sanchez's opinion exist, the court will not
discuss Dr. Sanchez's opinion here.

1 interacting with co-workers and supervisors on a superficial and non-collaborative
2 basis; brief public contact; and adapting to a work environment. *Id.* at 70.

3 Dr. Barrons’s findings of moderate limitations set forth in Section 1 of the
4 MRFCFA are not an RFC assessment and the ALJ was not required to consider
5 them. *See* Social Security Program Operations Manual System (“POMS”) DI
6 24510.060(B); *Merritt v. Colvin*, 572 Fed. Appx. 468, 470 (9th Cir. 2014) (finding
7 the “magistrate judge correctly concluded the ALJ was not required to consider, let
8 alone adopt, the mental functional limitations checked in Section 1 of the MRFCFA
9 form”) (internal quotations omitted); *Nathan v. Colvin*, 551 Fed. Appx. 404, 408
10 (9th Cir. 2014) (“Section 1 of the MRFCFA is not an RFC Assessment”). Instead,
11 the mild, moderate, or severe limitations in the broad categories of activities of
12 daily living, social functioning, and concentration, persistence, or pace are actually
13 used to rate the severity of impairments at steps two and three, which an ALJ then
14 translates into concrete work restrictions. *See Stubbs-Danielson v. Astrue*, 539
15 F.3d 1169, 1173-74 (9th Cir. 2008) (the ALJ properly translated the opined
16 moderate limitations to concrete restrictions); *Soto v. Colvin*, 2013 WL 3071263,
17 *2 (C.D. Cal. June 17, 2013) (ALJ not required to include the moderate limitations
18 in activities of daily living and social functioning in the RFC assessment because
19 they do not equate to concrete work-related limitations); *Young v. Colvin*, 2014
20 WL 4959264, *10 (E.D. Cal. Oct. 1, 2014) (“[M]oderate impairments assessed in
21 broad functional areas used at steps two and three of the sequential process do not
22 equate to concrete work-related limitations for purposes of determining a
23 claimant’s RFC.”) (internal quotations and citation omitted); *see also* Social
24 Security Ruling 96-8p.

25 Here, the ALJ translated plaintiff’s impairments, including the moderate
26 limitations opined by Dr. Barrons, into concrete work restrictions for the RFC
27 determination. *See Rogers v. Comm’r*, 490 Fed. Appx. 15, 17-18 (9th Cir. 2012)

1 (RFC assessment was adequate as it translated the steps two and three findings into
2 concrete work-related abilities). In reaching such an assessment, the ALJ relied on
3 Dr. Barrons's opinion that plaintiff, while suffering from various moderate
4 impairments, was nevertheless capable of performing work that only required
5 simple instructions and procedures and maintaining her concentration, pace, and
6 persistence for simple routines, as well as Dr. Lee's opinion that plaintiff could
7 perform simple and repetitive tasks. In other words, the ALJ's RFC determination
8 was consistent with the functional limitations opined by Dr. Barron, as well as Dr.
9 Lee. Thus, the RFC determination was supported by substantial evidence.

10 Plaintiff also argues the ALJ should have given Dr. Barrons's opinion great
11 weight, and implies that it should have been accorded greater weight than that of
12 Dr. Lee because, unlike Dr. Lee, Dr. Barrons reviewed all of plaintiff's medical
13 records. P. Mem. at 5. Here, the ALJ indeed gave Dr. Barrons's opinion
14 substantial weight, as well as that of Dr. Lee. Contrary to plaintiff's argument,
15 there was no basis for giving Dr. Barrons's opinion greater weight than Dr. Lee's
16 opinion. In general, the opinion of an examining physician would carry more
17 weight than that of a reviewing physician. *See Holohan*, 246 F.3d at 1202.
18 Moreover, contrary to plaintiff's contention, Dr. Lee also appeared to have
19 reviewed plaintiff's medical records. *See AR* at 680.

20 Accordingly, the ALJ's RFC determination was supported by substantial
21 evidence and his corresponding hypothetical to the vocational expert was proper.

22 //

23 //

V.

CONCLUSION

IT IS THEREFORE ORDERED that Judgment shall be entered
AFFIRMING the decision of the Commissioner denying benefits, and dismissing
the complaint with prejudice.

DATED: May 31, 2017

A handwritten signature in black ink, appearing to read 'SHERI PYM', written over a horizontal line.

SHERI PYM
United States Magistrate Judge